

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HOPE FOOD SUPPLY, INC.,

Plaintiff,

VS.

FOOD AND DRUG ADMINISTRATION,

Defendant.

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CIVIL ACTION NO. 4:12-CV-2153

OPINION AND ORDER

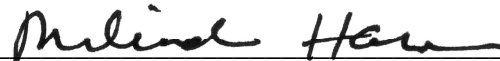
Pending before the Court is Defendants’ Motion to Dismiss (Doc. 4) filed by the United States Food and Drug Administration (“FDA”); the United States Department of Health and Human Services (“HHS”); Margaret Hamburg, Commissioner of FDA; and Kathleen Sebelius, Secretary of HHS (collectively, “Defendants”). Plaintiff Hope Food Supply, Inc. (“Hope Food”) has not filed a response, and, pursuant to Local Rule 7.4, such failure to respond is taken as a representation of no opposition. Defendants seek dismissal of this action under Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process and partial dismissal under Rule 12(b)(6) for failure to state a claim. Because the Court concludes that the Rule 12(b)(5) motion should be granted and the case dismissed, it is unnecessary to reach Defendants’ second argument.

The procedural history of this case is simple and straightforward. The complaint (Doc. 1) was filed on July 17, 2012; thereafter, Hope Food took no additional action. Under Federal Rule of Civil Procedure 4(m), the time limit for service expired 120 days after the complaint was filed; i.e., on November 14, 2012. During that time, Hope Food failed to serve either the United States Attorney’s Office for the Southern District of Texas or the Attorney General of the United

States in Washington, D.C., (Doc. 4 at 3), both of which are required in this case by Rule 4(i), which governs service of the United States, its agencies, and its employees. Since that time, Hope Food has not responded to Defendants' motion to dismiss or otherwise shown good cause for its failure to effect service of process, thereby subjecting the action to dismissal without prejudice. Fed. R. Civ. P. 4(m). Accordingly, it is hereby

ORDERED that Defendants' motion (Doc. 4) is **GRANTED** and the case **DISMISSED** without prejudice.

SIGNED at Houston, Texas, this 6th day of August, 2013.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE